

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 910 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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RAMTUJI B THAKORE

Versus

COMPETENT AUTHORITY AND ADDL COLLECTOR

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Appearance:

MR YN OZA for Petitioner

MR SP DAVE, AGP for the respondents nos.1, 2 & 3

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 12/02/97

ORAL JUDGEMENT

The orders passed by the Urban Land Tribunal, Ahmedabad, in Appeal No. Ahmedabad 26/95, dismissing the appeal on the question of limitation and thereby confirming the orders of the Competent Authority, dated October 18, 1989 are under challenge in the present petition.

Firstly, going to the orders passed by the Competent Authority on October 18, 1989, available at Annexure.B, it appears that deceased Babaji Nathaji Thakore, whose heirs have been impleaded in the present petition as respondents nos. 4(a) to 4(f) and certain other persons had submitted the Form No.5 under the Urban Land (Ceiling and Regulation) Act, 1976, proposing a scheme under Section 21 of the said Act. When the proceedings were pending before the Competent Authority, the Advocate who used to appear on behalf of the landholders, namely, Shri Ashwin Trivedi had submitted one application dated June 26, 1989 available at Annexure.D. This application in the first part raises certain technical contentions and also tries to show that the case of the landholders was required to be accepted. Any how, the second part of this application dated June 26, 1989 would go to show that there was a clear say of Advocate Shri Trivedi that, originally, one Shri Manubhai Shah used to represent the cause of the holders of the land and later on, one Shri K.A.Shah was in charge of the matter, but as Shri K.A. Shah was working as the Government Pleader at Himatnagar, the matter has been entrusted to some another lawyer and that the whole file containing the relevant papers could be with this lawyer or could have been produced in some other proceedings before the Court situated at Narol. The ultimate prayer, therefore, was that, with a view to collect the said papers and to produce the same before the Competent Authority, a longer date should be given. This application dated June 26, 1989 does not bear any orders which could have been passed by the Competent Authority. Any how, the matter came to be decided under the orders dated October 18, 1989. In these orders also, though in the caption there is a mention regarding this written say coming from learned Advocate Shri Trivedi, there is absolutely no mention regarding the same in the body of the orders. In other words, the Competent Authority does not say either in favour of granting time or refusing the same.

These orders, when came to be challenged by filing Appeal No. Ahmedabad 26/95, it has been said by the Tribunal that the appeal appears to be barred by Law of Limitation, as there has been a delay of about six years. The Tribunal proceeds to say that the order of the Competent Authority was sent by Regd. Post to the appellants, but they claim not to have received it. The Tribunal also says that the say of the appellants is that they had received the information in the year 1995, but they have failed to show as to how and under what circumstances they came to know of the said orders. It

is, broadly, on this ground that the appeal came to be dismissed on the technical contention of being barred by Law of Limitation.

Firstly, concentrating upon the appellate orders of the Tribunal dated June 26, 1995, available at Annexure.A, it shall have to be said that the appeal could not have been branded as barred by Law of Limitation on the ground that the appellants were not able to show as to how they came to know in respect of the orders under challenge. The Tribunal says, indeed, that the orders of the Competent Authority were sent to the appellants under Regd. Post Ack. Due letters. Any how, the Tribunal does not point out in the orders that, on verification of the record, this appears to be a correct factual position. It is, therefore, apparent that the Tribunal was not at an order while it has been said that the appeal happens to be barred by Law of Limitation. It shall have to be appreciated that, the Tribunal has not entered into the merits of the orders passed by the Competent Authority. Once the view is taken that the Tribunal was not justified in coming to the conclusion that the appeal appears to be barred by Law of Limitation, the said orders require to be quashed and set aside.

When once this is done, two alternatives would be open to me. It could be urged and in fact has been urged by learned Govt. Counsel Mr. Dave that the matter should be remanded to the Tribunal with a direction that the case of the petitioners could be examined on merits. But this course as has been suggested by the learned Govt. Counsel does not appear to be advisable because, once again, the question of remanding the matter to the Competent Authority would arise. This is apparently clear from the document at Annexure.D presented by learned Advocate Shri Trivedi before the Competent Authority, to which a reference has been made by me hereinabove. Learned Advocate Shri Trivedi in this document has stated that the papers could be with a lawyer to whom the matter appears to have been transferred or assigned by Shri K.A. Shah. It is also stated that, possibly, the papers could be before a Court at Narol and that it would be not very easy for the petitioners to have a return of the papers from the said Court without ascertaining the advocate who was representing the cause of the petitioners. Therefore, even before the Competent Authority, the case of the petitioners was that, certain papers were required to be produced for the just decision of the dispute. Looking to this fact, it appears that no useful purpose would be

served by quashing and setting aside the orders of the Tribunal and remanding the matter to the Tribunal with a direction to decide it according to law and on merits. The purpose would be served if adopting the other alternative, both the orders are quashed and set aside and the matter is remanded to the Competent Authority with a direction to decide the same after affording a reasonable opportunity of being heard to the petitioners and to produce the documents, if they want to do so. I order accordingly.

In the result, therefore, the present petition stands allowed and the impugned orders stand quashed and set aside. The other consequential and incidental orders following from the said two orders shall also stand quashed and set aside. The matter is re-transmitted to the Competent Authority for decision according to law and on merits in view of the above said observations of mine. This should be done as early as possible and within a period of six months from the date of the receipt of the writ of the present orders. Rule is made absolute accordingly, with no order as to costs.

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